

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3131

IN THE MATTER OF:

Served March 8, 1988

Application of P&T TRANSPORTATION)
COMPANY, INC., for a Certificate of)
Public Convenience and Necessity to)
Conduct Special Operations)

Case No. AP-87-28

By Order No. 3123, served February 2, 1988, the application of P&T Transportation Company, Inc. ("P&T" or "petitioner"), for an amended certificate of public convenience and necessity to transport passengers in special operations between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, was granted in part and denied in part.

On February 8, 1988, P&T petitioned for reconsideration of Order No. 3123. After careful review of petitioner's contentions and the evidence in the case, we find that the application should be denied.

P&T contends that the Commission erred in disallowing the testimony of Mr. Samuel L. Briggs, one of petitioner's public support witnesses, because there was no evidence in the record to support the claim that Mr. Briggs represented a health care facility. Petitioner asserts that the facility on behalf of which Mr. Briggs testified, The Greater Southeast Community Center for the Aging ("Center"), is a medical treatment facility. A statement by Mr. Briggs detailing the nature of his organization and the type of services it offers was attached to the petition as an exhibit.

P&T asserts in its petition that the Center is served by carriers authorized solely to transport medicaid patients to and from medical treatment facilities and that such service is paid for by the D.C. Medicaid program. The petitioner would like us to accept its

feel[ing] that the payment by the D.C. Medicaid program for the transportation in question serves as strong evidence that Medicaid defines the said center as a medical or health care facility and the Commission should consider Medicaid's interpretation.

Finally, petitioner states that the issue of whether the Center is or is not a medical treatment facility should have been raised at hearing.

Our decision to disallow Mr. Briggs' testimony was based on the highly social and recreational nature of the services offered by the Center. The record reveals that Mr. Briggs was specifically asked to "describe your facilities, where they are, and what they are." No description of any type of medical treatment or health care service was ever put forth by the witness at hearing. We also cannot give serious consideration to bare statements from petitioner's attorney that carriers who presently serve the Center are reimbursed by the D.C. Medicaid program and, therefore, the facility constitutes a health care facility. Evidence supporting such a claim should have been introduced as a part of the record at hearing. Exhibit A of P&T's Application for Reconsideration, Mr. Briggs' unnotarized letter, constitutes new information, although not of evidentiary quality, which was not available for consideration by the Commission at hearing. It cannot now be used as support for a claim of error.

Petitioner having failed to show that the Commission erroneously interpreted the facts in the record as they were presented at hearing, the application must stand denied.

We believe, however, that the factual assertions made for the first time in P&T's Application for Reconsideration constitute sufficient cause to warrant a reopening of this proceeding pursuant to Commission Rule No. 27-02 which provides that

[i]f, after the hearing in a proceeding, the Commission shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order for the reopening of the same.

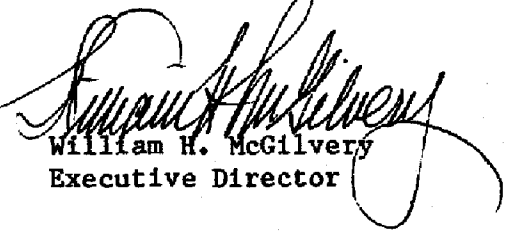
P&T will be given the opportunity to submit evidence which supports its claims that the Center is a health care facility and that transportation between the Center, on the one hand, and, on the other, points in the Metropolitan District, is reimbursed by D.C. Medicaid.

THEREFORE, IT IS ORDERED:

1. That the Application for Reconsideration of P&T Transportation Company, Inc., is hereby denied.

2. That Case No. AP-87-28 is hereby reopened for the receipt of evidence from P&T Transportation Company, Inc., within 30 days of the date of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director